

QUEEN'S BENCH.

ANDERSON et AL.,

Appellants,

AND

QUEBEC FIRE ASSURANCE CO.,

Respondent.

APPENDIX OF EVIDENCE.

March 1880



APPENDIX.

ANDERSON et al.,

APPELLANTS,

QUEBEC FIRE ASSURANCE COMPANY,

RESPONDENTS.

Evidence of the Plaintiffs in the Court below.

ANTOINE DESIRE RIVERIN.—I am the Secretary of the Quebec Fire Insurance Company at present. Hammond Gowen was president of the Company, on the thirteenth of March, one thousand eight hundred and fifty six, Joseph Morrin the Director and Peter Sheppard Secretary.

Policies in our office are usually signed by the President, one director and the Secretary. That has been the practice for a number of years. I am acquainted with the hand writing of the several persons who signed the policy now produced, marked Plaintiff's Exhibit A, I have frequently seen the said persons write and sign their names respectively, and I swear that the signatures, H. Gowen, President, Jos. Morrin, Director, and P. Sheppard, Secretary, are the signatures of the said parties and in their own hand writing. Being shown the paper marked Plaintiff's Exhibit B, which is a receipt renewing the said Policy for twelve months, the said receipt is signed by Hammond Gowen, President, George Hall, Director, and myself as Secretary and the same are the genuine signatures of the said parties. The Plaintiffs had the premises, in question in this cause, insured from the fifth of July one thousand eight hundred and fifty to the sixth of January one thousand eight hundred and fifty six under the same policy which then expired. They then executed the policy of the thirteenth of March, one thousand eight hundred and fifty six. When the last policy was granted it was with the understanding that the store was then vacant and the premium was reduced by reason thereof from thirty five shillings to twenty shillings. The insurance was effected by Mr. Weston Hunt as the agent of the heirs Hunt the Plaintiffs. Whilst the first policy was in force, it was understood that the store or building was occupied as a joiner's work shop and a rigging and moulding loft. But when the last policy was taken out by M^r. Weston Hunt, the premises were represented as vacant and the premium was in consequence reduced from thirty five shillings to twenty shillings on the store and from thirty to twenty on the wharf.

What I understand by a vacant store is one which is not occupied or used for storage of goods. I know myself the situation of the premises in question.

I am not aware whether the said premises were occupied by the Plaintiffs themselves, or whether they had leased them to other parties. I did not know the premises insured to belong to the Plaintiffs before the night of the fire. I am satisfied that the premises insured belonged to the Plaintiffs in this cause. On the thirtieth or thirty first of March one thousand eight hundred and fifty seven the store in question was totally consumed by fire and destroyed. The said wharf was at the same time partially burnt. I am aware that the premises in question were occupied for several years as a ship building yard, although I had no knowledge of their being insured at our office as I took them for premises belonging to parties other than Plaintiffs.

When Mr. Hunt came to the office, I am not prepared to say the exact words he made use of, but I can say that he represented the store as vacant and claimed in consequence a reduction in the premium of insurance, which reduction was made as above stated.

A general reduction took place in the premiums at our office some time previous to Mr. Hunt's insurance. I believe it was in the year one thousand eight hundred and fifty five. At that time the discount allowed to stockholders was reduced from thirty three to twenty per cent and the premiums were also reduced in order that stockholders should not have to pay a higher premium than before.

This virtually left the premium at the same amount as it was before, for stockholders. In the year one thousand eight hundred and fifty six, the discount was further reduced from twenty to five per cent. At the same time the premiums themselves were also reduced generally. The Plaintiffs are stockholders and on the policy in question were allowed a discount of five per cent; The highest rate of discount having been some years previous, to my knowledge, thirty three and one third discount.

At the time of the fire it came to my knowledge that the store was occupied by Mr. Lemelin, ship builder.

Cross examined.

I have been in the employ of the Defendants since the year one thousand eight hundred and fifty and since that time I have been acquainted with Mr. Weston Hunt one of the Plaintiffs I am aware that since the last mentioned year the said Weston Hunt has been a director of the said Fire Insurance Company. During the time I was so in the employ of the said Company, it was Mr. Weston Hunt who insured the property in question in this cause. During the continuance of the first policy which I have spoken of the property in question was insured under the same risk, that is as a moulding and rigging loft and joiner's work shop.

Had we been made aware at the time of granting the last policy than any occupation of a hazardous description was going on in the premises in question the rate of premium would have remained at thirty five shillings as on the last renewal.

The Defendants in this cause were not made aware by the Plaintiffs or any person on their behalf at any time subsequent to the policy mentioned in the Declaration in this cause that any hazardous occupation or trade was being carried on in the store in question.

Had the Plaintiffs made the Defendants aware of any such fact the Defendants would have either cancelled the policy or charged the extra premium. The Plaintiffs did not make known to the Defendants at any time during the existence of the policy, Exhibit A or the renewal thereof the existence of a stove or the use of fire in the store in question.

Had the Plaintiffs made know the fact that fire was used the store in question without the existence of any chimney the Defendants would have cancelled the policy.

The Defendants in this cause take no risk what ever on buildings in which fire is used with out there having a good and substantial stone or brick chimney. The wharf in question in this cause has always been considered as the same risk as the store and the premium of insurance thereon has always been the same as that of the store with the exception of one year. The wharf had to the store the same relation as a foundation has to a house. In fact the store was built up on the wharf: had the Defendants cancelled the policy by reason of any increase of hazard or risk on the store they would likewise have cancelled the policy on the wharf.

Re Examined.

The policy now produced is the policy relating to the property made in the year one thousand eight hundred and fifty. This is the policy I have already spoken of and was continued in force till the year one thousand eight hundred and fifty six. The description of the store in that policy is the same as in the policy A filed in this cause with the exception of one word "forty" instead of "fifty." The amount of property insured in the policy of the year one thousand eight hundred and fifty is eleven hundred pounds in the policy A is one thousand pounds the property insured in both policies is the same.

The net premium charged in that policy is ten pounds seven shillings and six pence for six months, when property is insured for six months we always charge for three quarters of a year.

JOSEPH POIRE—Je connais Jean Lemelin, il bâtissait dans le mois de Mars de l'année dernière un bâtiment sur les prémisses des Demandeurs.

J'étais dans l'emploi de Mr. Lemelin comme journalier. Lorsque le feu a éclaté j'étais là un des premiers, mais je ne sais pas comment le feu a originé.

Lorsque je suis arrivé sur les lieux le feu avait fait du progrès. Lorsque je suis arrivé le feu avait embrasé tout le hangard, il était alors à peu près vers onze heures.

Transquestionné :

Il y avait des menuisiers qui travaillaient dans le hangard en question, et les gréeurs y étaient aussi je crois. Je crois qu'il n'y avait point de cheminée dans ce hangard.

JEAN LEMELIN—Le hangard a été totalement détruit et ce hangard valait environ cinq cent cinquante louis, et les dommages causés au quai valaient cent à cent cinquante louis.

Transquestionné :

Lors du feu il y avait un vaisseau en construction sur le terrain en question. Ce hangard servait à faire les ouvrages de menuiserie, les mats et les gréments. Dans le bas du hangard les charpentiers travaillaient et y faisaient beaucoup de ripas. Dans ce hangard il y avait un poêle et lors de l'accident ce poêle n'était pas en usage, mais le poêle était chanifié lorsqu'on y travaillait aux gréments. Il n'y avait point de cheminée dans ce hangard, mais la fumée était conduite par des tuyaux en dehors de la bâtisse. Le poêle était dans la deuxième étage et le tuyau sortait par le pignon.

Je n'ai pas connaissance qui faisait le feu dans le poêle ce jour là, et quelques jours auparavant il n'y avait pas eu de feu dans ce poêle, ni le jour de l'accident. Je ne suis pas monté le jour de l'accident dans l'étage où était le poêle et je ne sais pas s'il y avait du feu dans ce poêle ce jour là. J'y suis monté à huit heures et demi du soir dans l'étage où était le poêle, je ne l'ai pas ouvert.

Re-examiné :

Les charpentiers travaillaient dans l'étage du res-de-chaussée, les menuisiers à la deuxième étage, et les gréeurs dans le même étage que les menuisiers, mais séparés par une cloison.

On faisait que très peu de feu dans ce poêle et j'allais très rarement dans ce hangard. L'on faisait que très peu de gréments dans ce temps-là.

NARCISSE BOUCHARD—J'ai connaissance du feu qui a détruit le hangard en question en cette cause.

Le jour de l'accident j'étais occupé à charroyer de la neige et en arrivant sur la glace j'aperçus une lueur, et j'ai vu que le feu était sous le hangard à travers le quai, et j'ai vu l'ombre d'une personne qui s'évadait sur la glace, et alors j'ai donné l'alarme du feu. C'est la partie la plus haute du quai qui a premièrement pris en feu, j'ai vu la flamme sortant entre le hangard et le quai.

NOEL FONTAINE—C'est moi qui conduisais la menuiserie du vaisseau lors de l'accident en question en cette cause. J'étais foreman.

Le jour de l'accident j'ai visité le hangard et en le fermant tout était en bon ordre. Il y avait eu du feu le matin mais pas l'après-midi. J'ai laissé la bâtisse à six heures du soir, et comme j'étais intéressé j'ai examiné le poêle et il n'y avait pas de feu et il n'y en avait pas en de l'après-midi. Entre l'appartement où était le poêle et le quai il y avait deux planches. Les menuisiers et les gréeurs travaillaient dans le même étage où était le poêle, mais étaient séparés par des planches qui étaient pilées, le poêle était dans la partie des gréeurs.

Il y avait eu très peu d'ouvrage fait par les gréeurs, ils avaient commencé une semaine auparavant. C'est moi qui ai posé le poêle et je l'ai posé environ une semaine avant l'accident, quand les gréeurs ont commencé à travailler.

On ne faisait point de feu dans le poêle, les gréeurs seuls en faisaient usage pour leur commodité, pour chauffer les cordages et la graisse. Les charpentiers ne travaillaient ordinairement que dehors.

Les années auparavant il y avait eu un poêle. Les menuisiers ne travaillaient pas constamment dans le hangard, mais seulement qu'à la petite mâture.

Transquestionné :

Aussitôt qu'un vaisseau commence à être bâti les menuisiers commencent à travailler à la menuiserie nécessaire et c'est ce qui a eu lieu en cette occasion. Les charpentiers faisaient des copeaux dans l'étage d'en bas. Le plancher du res-de-chaussée servait de couverture au quai. Ce plancher n'était pas embouffeté et les ripes passaient à travers dans plusieurs endroits. C'est absolument nécessaire pour les gréeurs d'avoir du feu en hiver pour amollir les cordages et tel qu'on en fait usage dans les autres chantiers. Il y avait de la graisse dans le hangard. Il y avait aussi du brai. Il n'y avait point de cheminée, le tuyau passait à travers le pignon du côté de la rivière.

Les planches qui séparaient les gréeurs des menuisiers étaient pour l'usage de ces derniers. Ces planches étaient pilées de quatre pieds de haut et d'environ cinquante pieds de long. Ce bois était sec et en bon ordre.

JOSEPH ARCHER—(Sworn—not examined.)

Defendants admit the amount of damage as alleged in the Declaration.

PROVINCE OF CANADA, } IN THE SUPERIOR COURT.
DISTRICT OF QUEBEC.

I, the undersigned, one of the Judges of the Superior Court for Lower Canada do hereby certify, pursuant to the requirements of the law in such case made and provided, that this and the thirteen preceding pages contain a true copy of the notes of verbal testimony adduced and taken at the trial of the cause first above mentioned before the Jury, and of all exceptions and objections made or taken at such trial.

Quebec, 26th April, 1858.

W. C. MEREDITH,

J. C. C.